

JOHN LEWIS
5th District, Georgia

SENIOR CHIEF DEPUTY
DEMOCRATIC WHIP

COMMITTEE ON
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RANKING MEMBER,
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HEALTH



Congress of the United States
House of Representatives
Washington, DC 20515-1005

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February 7, 2017

The Honorable Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

Dear Inspector General Elkins:

I write on behalf of a group of concerned constituents to respectfully request an Environmental Protection Agency's (EPA) Office of Program Evaluation review.

As outlined in the attachment, concerned citizens have raised environmental and public health concerns regarding compliance possibly in Atlanta, Georgia, and across the country. They would appreciate a review examining the City of Atlanta's compliance with the requirements of its combined sewer overflow consent decree and EPA Region 4's oversight of Atlanta's consent decree compliance.

As always, I thank you for your service and your consideration of the attached concerns.

Sincerely,

John Lewis
Member of Congress

September 22, 2016

U.S. Representative John R. Lewis
343 Cannon House Office Building
Washington, DC 20515

Re: City of Atlanta, Combined Sewer Overflow Consent Decree (1:95-CV-02550-TWT) and
First Amended Consent Decree (1:98cv1956-TWT)
VIA E-MAIL, THIS DOCUMENT CONTAINS LINKS TO WEBSITES AND ON-LINE DOCUMENTS

Dear Congressman Lewis,

In 2001 and 2014 citizens notified you about problems with the implementation of Atlanta's Combined Sewer Overflow Consent Decree (CSO-CD) and both times you graciously provided assistance. We are soliciting your assistance in resolving problems which are occurring primarily in Atlanta, but also throughout Georgia, and in some cases, on a national scale. The problems are ones which:

you likely are not aware of and/or have been withheld from you and Congress;
are likely to rise to the level of fraud; and
can hopefully be resolved with a Congressman's request for investigations by:
the Environmental Protection Agency (EPA) [Office of the Inspector General](#) (OIG),
the U.S. Department of Justice (DOJ) [Office of Professional Responsibility](#) (OPR); and
possibly the Federal Bureau of Investigation (FBI)

Also, U.S. District Judge Thomas W. Thrash has jurisdiction over Atlanta's CSO-CD and its First Amended Consent Decree (FACD). On January 30, 2013, the Court administratively closed both cases with the right of the parties to reopen them. Please prevail upon the EPA to object to any motion to terminate the decrees until such time as any investigations are completed; any recommended actions are implemented, if necessary, by judicial order; and until you contact the EPA again.

Until it is exposed and immediately rectified, the EPA, the Georgia Environmental Protection Division along with Georgia's State Geologist (EPD) and the City of Atlanta are collectively engaging in a long-term pattern of circumventing the intent of Congress by violating:

- a) Federal and Georgia water-related environmental statutes and regulations,
- b) Requirements of Atlanta's CSO-CD and FACD, and
- c) Requirements for the issuance, compliance assurance, and enforcement of permits which lawfully protect public health and the environment.

Their actions endanger public health; degrade the environment; make a mockery of the process for public comments ([28 C.F.R. §50.7\(b\)](#) and [40 C.F.R. §124.13](#)); and impose an unrestrained financial burden on citizens. Collectively, EPA/EPD/Atlanta colludes to perpetrate a fraud against the public.

Prior to the litigation that resulted in the CSO-CD: Environmental water law requires protecting public health and/or the environment but the EPA/EPD/Atlanta had established an "organized culture" of defying these laws. This includes:

1) Defiance of the Clean Water Act (CWA) and the requirements of the National Pollutant Discharge Elimination System (NPDES) program, hereinafter CWA/NPDES, which protects surface waters. A pattern of improper permitting, compliance and enforcement by EPA/EPD/Atlanta is first documented in a 1990 EPA [OIG report](#)¹. Judge Thrash's decision, which led to the CSO-CD, identified a [similar pattern](#)².

2) Defiance of the Safe Drinking Water Act (SDWA) and the requirements of the Underground Injection Control (UIC) program ([42 U.S.C. § 300h\(d\)\(2\)](#), 40 C.F.R. Parts [144](#) and [145](#)) hereinafter SDWA/UIC.

Historically, EPA/EPD/Atlanta completely omitted UIC statutory and regulatory requirements of the SDWA/UIC program which protects underground sources of drinking water (USDW, a type of aquifer). Subsequent to the CSO-CD: EPA/EPD/Atlanta's pattern is more difficult to detect but the "organized culture" continues. As of this writing, all parties to both Consent Decrees, and the attorneys who represent them, are knowingly, willfully, and collectively involved in endangering public health and the environment at citizen's expense by perpetuating their defiance with violations of:

- a) federal law, established by the U.S. Court of Appeals, Eleventh Circuit³ (1997), which affirmed the prohibition of unauthorized injection and the prohibition of the movement of fluid into USDWs;
- b) the consensual agreements found in Atlanta's CSO-CD and FACD;
- c) the 1994 CSO Control Policy which was amended to the CWA by Congress⁴; and
- d) EPA/EPD Memoranda of Agreement (MOA's) for Delegated Authority of the CWA/NPDES program (40 C.F.R. Parts 122, 123, 124, and 125) and for Primacy⁵ of the SDWA/UIC program.

The benefits which are derived by each of the parties and the attorneys who represent them cannot be fully identified but at least two harms can be easily identified:

- 1) Any ratepayer (in-city and inter-jurisdictional) who pays any portion of a water/sewer bill, and anyone who pays Atlanta's 1% sales tax for Atlanta's sewer program, is forced to support the illusion of compliance with the CWA and the SDWA. The financial burden is reportedly among the one or two highest in the country. The illusion is publicized as a regulatory, enforcement, and political success but public health and the environment remain endangered. Converting the illusion into lawful compliance creates the injustice of an even greater financial burden on citizens.
- 2) The abuse of authority, especially by the EPA and the DOJ, damages public trust and confidence in public officials. Members of the public are entitled to assume that public officials will act in accordance with law (11th Cir. 1984), (5th Cir. 1977).

The above allegations are supported by an extensive collection of documents and an understanding of the plans/designs for bringing Atlanta's sewer infrastructure into compliance with the SDWA and the CWA along with familiarity of the as-built facilities. The collection of documents along with supplemental explanations will substantiate the conditions in Atlanta, in Georgia, and nationwide.

Numerous examples of inconsistent terminology; denials that UIC permits are required; ineligible facilities receiving NPDES permits; facilities discharging to unpermitted receiving waters; the issuance of permits which fail to require compliance with the CWA; failures to comply; failures to enforce; omissions of fact; concealment of material information from the Court (lack of candor); false reporting and acceptance of false reports have already been identified. These are related to the statutes; the regulations; the consent decrees; the EPA/Georgia NPDES and UIC MOA's; the CSO Control Policy and a related EPA/EPD determination (September 21, 2000); EPA's Enforcement Alert (April 2000); and UIC/NPDES permits, applications, and related documents. The examples that can already be identified will be corroborated and even more examples will be reviewed if EPA-OIG and US DOJ-OPR investigations are opened. In view of the long-term nature of the problems, their resolution will likely require judicial involvement.

The following Topics and Questions are presented with the intent that answers and recommendations for further action be acquired and incorporated into reports by the EPA-OIG and the DOJ-OPR.

Topic 1: This has to do with the applicability of SDWA/UIC permit requirements for dropshaft-injection wells, in Atlanta, in Georgia and in other states⁶, which are used to send wastewater into deep-rock tunnels. Federal law, established by the U.S. Court of Appeals, Eleventh Circuit (1997) affirmed the prohibition of unauthorized injection (§144.11) and the prohibition of the movement of fluid into USDWs

(§144.12). An [EPA-R4 memo⁷](#) concludes, "...releases from [Atlanta's] storage tunnel cannot be quantified but are highly likely. Potential contamination of the water table should be considered..." Atlanta never complied with nor did EPA/EPD ever enforce SDWA/UIC permit requirements.

a) Three times, the EPA determined, generally, that "tunnels...do not need permits" and that "EPA could exercise its emergency enforcement authority under Part D, Section 1431 of the SDWA" if certain conditions exist. The determinations are not consistent with the SDWA statutes, the UIC regulations, the 11th Circuit decision, and completely disregard the likelihood of aquifer contamination.

b) US DOJ attorneys representing the EPA in Atlanta's CSO-CD, FACD, and other decrees, withheld material information from the Court and merely said a "tunnel is not a well". The attorneys never addressed whether the emplacement of wastewater into deep-storage tunnels through a dropshaft is "underground injection" nor did they disclose to the Courts the 1997 Eleventh Circuit decision.

c) On numerous occasions, citizens refuted the EPA's determinations and the DOJ's representations. It is the shafts (dropshaft-injection wells) which require UIC permits, not the tunnels that are filled by them. And when referring to the emergency enforcement authority, the determinations fail to acknowledge that the emergency enforcement authority is supplemental to the permit program and not to be relied on in lieu of the UIC permit program. In support of their allegations, the citizens provided legal opinions (Atlanta and DeKalb County, Georgia) which were prepared by Georgia attorney [REDACTED]

Question 1: (a) Are permits, issued in accordance with the SDWA/UIC program, required for the dropshaft-injection wells which are used to send wastewater into subsurface deep-rock tunnels?

Topic 2: This has to do with Atlanta's 2005 CSO NPDES Phase I permits ([East⁸](#) and [West⁹](#)) and the preparation of draft-CSO NPDES Phase II permits (East/West) which were eventually reissued in 2015.

[On March 19, 2014¹⁰](#), Representatives Hank Johnson and John Lewis wrote to the EPA's Administrator Ms. Gina McCarthy requesting that the EPA review Georgia's administration of Clean Water Act permitting and the lack of a reissued NPDES permit for discharges to the Intramural Creek.

In response, Ms. Heather McTeer-Toney, EPA Region-4 Administrator [wrote, in part¹¹](#), "Last year [2013], the EPD sent an early draft permit to EPA and the city. Since then, the EPD has had several meetings with the City and has changed the draft permit based on comments from both the EPA and the City".

Question 2: On what date did EPA/EPD/Atlanta begin acting collectively in their preparation for the reissuance Atlanta's 2015 CSO Phase II NPDES permits?

Topic 3: This has to do with inconsistencies in the applications, the supporting documentation, the preparation, and the reissuance of Atlanta's 2015 CSO NPDES Phase II NPDES permits (East/West).

On December 4, 2014, an EPD notice announced the beginning of the public comment period for Atlanta's draft-CSO permits (E/W) and that copies of the draft-permits were available at EPD. Then, on August 19, 2015, the EPD responded to all comments and reissued Atlanta's CSO NPDES Phase II permits. Regarding the reissuance of Atlanta's 2015 Phase II permits (E/W):

Question 3a: Is the information in Atlanta's Sampling/Monitoring Plans, applications, and process drawings for the 2015 Phase II permits (E/W) consistent with the following "criteria": applicable federal/Georgia statutes, regulations, the NPDES MOA, the CSO Control Policy and the related determination, the EPD/EPA-R4 Permit Quality Review (PQR), and both consent decrees?

Question 3b: Are the draft-Phase II permits (E/W) consistent with the criteria in Question 3a?

Question 3c: Are the [EPD's responses](#)¹² to the [public comments](#)¹³ and the final Phase II permits (East and West) consistent with the "criteria" in Question 3a?

Question 3d: If Atlanta's reissued CSO Phase II permits fail to require compliance with the CWA/NPDES program, then what can be said about Atlanta's operation of the CSO systems (East/West); Atlanta's compliance with the CWA/NPDES program; Atlanta's compliance with its consent decrees; and the EPA/EPD's follow-through with appropriate enforcement?

Topic 4: This has to do with Atlanta's CSO consent decree which requires that the city submit quarterly reports to EPA/EPD and the citizen plaintiff which are "... true, accurate and complete..."

On January 28, 2014, Atlanta's City Auditor released an audit titled, "[Performance Audit: Combined Sewer Overflow Consent Decree Impact](#)". The audit identified several deficiencies of Atlanta's CSO program, in particular, infrequent street sweeping, deferred facilities maintenance, inadequate funding, etc., which are related to the CSO Control Policy's "Nine Minimum Controls". [REDACTED] Commissioner of the Department of Watershed Management agreed with the findings in this audit.

Question 4a: a) Are the findings in Atlanta's January 28, 2014 audit and [REDACTED] in error or b) did Atlanta submit false information in numerous quarterly reports?

Question 4b: Considering the findings from the Questions #2 and #3, above, is Atlanta submitting accurate information in the Quarterly Reports regarding "discharges" from "treatment plants", the number of "Combined Sewer Overflows", "Spills", unauthorized "Bypasses", TSS, BOD, etc.?

Question 4c: Did EPA/EPD knowingly accept and/or have reason to believe that false information was submitted by Atlanta and not require corrective action or take enforcement action?

Topic 5: This has to do with the applicability of the findings in Questions #3, above, regarding other CWA/NPDES permits in Atlanta, in Georgia and other states.

Question 5a: After applying the questions in #3, above, to the reissuance of Atlanta's permit for its three Water Reclamation Centers (RM Clayton, Utoy, South River), what are the findings?

Question 5b: Are other final NPDES [permits in Georgia](#)¹⁴ (municipal and industrial) inconsistent with applicable federal/Georgia statutes, regulations, and the NPDES MOA, and the PQR?

Question 5c: Are there final NPDES [permits in other states](#)¹⁵ (municipal and industrial) which are inconsistent with applicable federal/state statutes/regulations and MOA's/[PQR's](#)¹⁶?

The citizens copied below have reviewed this letter and strongly encourage you to request both investigations and ask EPA to object to any motion to terminate Atlanta's consent decrees.

Sincerely,

[REDACTED] involved since 2001, resident of Ga. Congressional Dist. 5
Member, NOCRAP (Newly Organized Citizens Requesting Aquifer Protection)

Cc:

[REDACTED] involved since 1989, resident of Ga. Congressional District 5
[REDACTED] involved since 1989, resident of Ga. Congressional District 13
[REDACTED] involved since 1996, resident of Ga. Congressional District 5
[REDACTED] involved since 2000, resident of Ga. Congressional District 5
[REDACTED] involved since 2001, Ga. Congressional District 7
[REDACTED] involved since 2002, resident of Ga. Congressional District 5
[REDACTED] involved since 2010, resident of Ga. Congressional District 4